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**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
WERNER ENTERPRISES, INC.  
AND  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**FMCSA-2004-18940-4****SUBJECT: PILOT PROGRAM**

Recording drivers' hours of service by use of Global Positioning System (GPS) technology and complementary computer software programs.

**PURPOSE:**

The purpose of this Memorandum of Understanding (MOU) is to revise and amend the terms of a demonstration project previously entered into by Werner Enterprises, Inc. (Werner) and the Federal Highway Administration (now the Federal Motor Carrier Safety Administration or FMCSA) on June 10, 1998. The demonstration project, and request for participation, was announced and established by publication in the Federal Register on April 6, 1998 (63 FR 1669), and allows for the use of GPS technology and complementary computer software programs to record drivers' hours of service in lieu of using the "record of duty status" required by 49 CFR 395.8. This MOU promotes the Federal Motor Carrier Safety Administration's (FMCSA) regulatory reform initiative with the use of new technology to reduce paperwork burdens, enhance highway safety, and improve operational efficiency. This revised and amended MOU constitutes the full and complete agreement between Werner and the FMCSA.

## **AGREEMENT:**

(1) For purposes of this agreement, the FMCSA has determined that WERNER's GPS technology and complementary safety management computer systems may be used in lieu of using the "record of duty status" required by 49 CFR Part 395.8. This determination is contingent upon the following conditions:

- a) System defaults must record truck stationary time as on duty not driving,
- b) Movements of the vehicle greater than one mile must be recorded as driving time,
- c) Speed (which is determined by time and distance between truck location updates) that is calculated to be below 10 miles per hour (mph) may be considered invalid. In these instances, distance traveled may be divided by average driver mph or average State-to-State mph to "estimate" driving time. Werner must eliminate driving time modeling entirely when Qualcomm improves its satellite positioning frequency, or when other technology incorporated into the system makes it unnecessary,
- d) No system default is authorized for routine stops (i.e. deliveries, pickups, fuel, rest, etc.). Drivers must make the correct duty status entry into the electronic system, and
- e) The ability of drivers to manipulate the system to conceal driving hours

must be eliminated in its entirety.

(2) Under the terms and conditions of this agreement, WERNER may require its drivers to use the company's GPS technology and complementary safety management computer systems to record their hours-of-service in lieu of complying with the requirements of 49 CFR 395.8.

(3) The FMCSA will, to the maximum extent practicable, communicate with State, provincial, and local enforcement agencies regarding the terms and conditions of this agreement.

(4) The FMCSA will not divulge to any third party proprietary information related to WERNER's GPS technology or related safety management computer systems.

(5) In the event the FMCSA conducts a compliance review or any other type of motor carrier safety management investigation of WERNER, the FMCSA will review 100 percent of the applicable operating division's hours-of-service records for compliance with the maximum driving time limitations set forth in 49 CFR 395.3, using the Werner automated hours of service assessment system. The 100% sampling will not extend to any other portion of the regulations reviewed. With respect to investigation of hours-of-service record accuracy (49 CFR 395.8(e)), the FMCSA reserves the right to conduct a sampling of records in accordance with FMCSA policies applicable to all motor carriers, and Werner reserves the right to contest the validity of the sampling used to the same

extent any other motor carrier could do so. The FMCSA will not hold WERNER to a higher standard of compliance than the rest of the industry, and will not treat WERNER differently regarding the conduct of complaint investigations, or other types of investigations conducted by FMCSA. The FMCSA may conduct compliance reviews consistent with standard operating policies applicable to all motor carriers at any time during the pilot. These compliance reviews will result in the assignment of a safety rating, and could result in the initiation of an enforcement action for serious violations.

(6) WERNER will require its drivers to immediately note any failure of the GPS technology or complementary safety management computer systems and immediately begin preparing hard copy driver logs during the period of time the technology is inoperative. Werner will maintain a centralized record of such failures, including the date, time periods, divisions of drivers impacted, and the type of failure. Upon request by enforcement officials, WERNER will provide facsimile copies of their "records of duty status" for the current day and the previous seven days. In the event Werner is unable to produce these facsimile copies within two hours, the driver may manually prepare a driver record of duty status for the current day and reconstruct a recap of duty hours for the previous seven (7) days. When the system becomes operational a fax of the missing records of duty status will be forwarded to the agreed upon site as soon as possible. Failure to produce either of these two types of documents within two hours constitutes a

violation of this MOU and 49 CFR 395.8(a).

(7) WERNER will ensure that each commercial motor vehicle it operates has on board, and available for review, an information packet containing the following three items:

(a) An instruction sheet describing in detail how hours-of-service data may be retrieved from the onboard GPS equipment,

(b) A supply of blank record of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of each trip, and

(c) A copy of the MOU issued by the FMCSA, authorizing WERNER to use GPS technology and complementary computer software programs in lieu of the "record of duty status" required by 49 CFR 395.8.

(8) WERNER shall maintain for six months quarterly summary hours-of-service compliance reports. The reports shall identify:

(a) Driver training and internal audit procedures employed by WERNER to ensure the accuracy of the electronic hours-of-service records,

(b) The percent of driver logs in each WERNER operating division, found through internal auditing, to be in violation of the maximum driving time limitations set forth in 49 CFR 395.3(a) and 395.3(b),

(c) The number of drivers in each WERNER operating division, the number of

drivers by operating division audited for hours-of-service record accuracy, and the percent of driver logs by operating division found to be in violation of 49 CFR 395.8(e), and

(d) The support systems must also provide a complete audit trail of edits (changes) made to "driving " time shown on driver duty status records.

(9) During periodic on-site visits by FMCSA personnel, WERNER will allow FMCSA personnel reasonable access to its safety management information system(s). The review team will determine the scope and nature of the assessment. At a minimum, access to records will include:

- (a) Driver records of duty status created by Werner's GPS and related safety management computer systems,
- (b) Driver-Dispatch "message histories" and detailed position histories associated with driver records of duty status,
- (c) Driver payroll records associated with the driver records of duty status,
- (d) Driver shipping document records, and
- (e) Miscellaneous trip expense records.

(10) During periodic on-site visits by FMCSA personnel, WERNER will, upon

request, furnish the FMCSA a driver specific report of violations of the requirements relating to maximum driving time rules (49 CFR 395.3). With regard to falsification of records of duty status, information will be provided on violations of 49 CFR 395.8(e) for each individual driver requested.

(11) During periodic on-site visits by FMCSA personnel, WERNER agrees to furnish information, upon request, indicating the number of times the "driving" time on driver records of duty status were changed for each driver, and identifying who authorized each changed record.

(12) During periodic on-site visits by FMCSA personnel, WERNER agrees to furnish information, upon request, indicating what disciplinary and/or remedial action, if any, was taken as a result of a driver violating rules set forth in 49 CFR 395.3 and 49 CFR 395.8(e).

(13) Both Werner and the FMCSA acknowledge that the FMCSA does not find the current Werner GPS - based (point-to-point) methodology of recording mileage acceptable. Werner's GPS methodology consistently understates the distance traveled. Werner agrees to identify and implement an accurate means of determining distance traveled, within 120 days of the signing of this agreement.

#### **CONSULTATIONS AND EVALUATIONS:**

Both parties may consult at any time on issues relating to this agreement. Such

consultations will take place at the earliest possible date, but no later than thirty (30) days after one of the parties makes a request, unless otherwise mutually agreed. On site assessments will occur to allow full evaluation of the changes being implemented, as well as improvements, which may become possible with changes in the technology. The initial on site assessment will occur within the first year of this agreement to evaluate the success of the changes implemented.

#### **EFFECTIVE DATE AND TERMINATION DATE:**

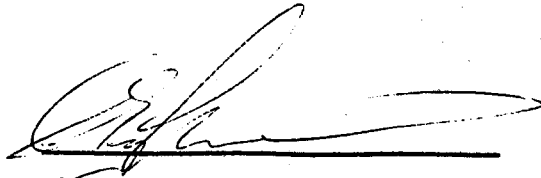
This amended agreement is effective upon signature by both parties and will remain in effect for 18 months from the date of signing, unless terminated by either party.

Termination of this agreement may occur for reasons relating to significant noncompliance with the applicable safety regulations, failing to comply with specific sections of this MOU, or for significant increases in accidents. At the end of the 18-month period of this agreement, an assessment will be made to consider making this pilot program permanent. The FMCSA will automatically extend the agreement period beyond 18-months if the assessment has not been completed, or if an agency decision regarding permanency has not been rendered. If determined not to be permanent, this agreement may be extended, by mutual agreement of both parties, beyond the 18 months specified until the FMCSA establishes a uniform standard for Electronic On Board Recording

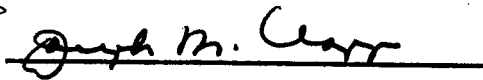


Devices, or until the FMCSA terminates the pilot announced on April 6, 1998 (63 FR 1669).

Signed this 26 day of March 2002, in two originals.



Gregory L. Werner  
Werner Enterprises, Inc.  
Omaha, NE



Federal Motor Carrier Safety Administration  
Washington, DC